SB CRIMINAL MISC. PETITION NO.1615/06.
Suresh Gupta Vs. State & Ors.

8.9.2006.

HON'BLE MR.JUSTICE HARBANS LAL

Mr. Ravi Yadav for the petitioner.
Mr. Arun Sharma PP for the State.

The instant petition under Section 482 Cr.P.C. by the complainant-petitioner seeks quashing of the observations made in the order dated 1.8.2006 passed by the learned Sessions Judge, Jaipur District, Jaipur in Criminal Misc. Bail Application No.775/2006 arising out of FIR No.690/06 PS Sanganer whereby the petitioners therein have been granted anticipatory bail.

The sole grievance of the petitioner is that the learned court below has made certain observations that the case is of civil nature and the complainant may seek his relief in the competent court by filing a civil suit for specific performance of contract and for registration of the sale-deed or its cancellation. The learned court below has also observed in the aforesaid order that no offence what-so-ever is constituted from the facts of the case mentioned in the complaint.

Learned counsel has submitted that these observations would adversely affect the investigation and are prejudicial to the interests of the complainant. So, the directions may be given that these observations shall not come in the way of the fair investigation being made in the case.

Learned PP has also no serious objection to giving such directions.

Having considered the submissions and all other facts and circumstances of the case as also the settled law in this behalf as held in **Hitesh Verma Vs. State of Jharkhand & anr.- (2005)13 SCC 174**, I feel inclined to accept the prayer of the learned counsel for the complainant.

It has been held in the aforesaid authority that while granting bail improper observations made by the High Court in the order rejecting bail regarding the nature of offence, the police filing final report alleging that the offences were made out. When the matter was taken to the Hon'ble Apex Court, it was held that the High Court ought not to have made such observations, for, if the superior court make any such observation, the subordinate court in these circumstances would be unduly swayed by it and may implicitly take certain decision without there being any proper application of mind. Under the circumstances, the observations made were deleted by the Hon'ble Apex Court.

Consequently, the prayer of the learned counsel is allowed to the extent that the aforesaid observations made in the bail order shall be treated to be made for the purpose of the decision of the bail application only and they shall not come in the way of the investigating agency making fair investigation and shall also not adversely affect the investigation being conducted in this matter.

(HARBANS LAL)J.